

THE OFFICE OF REGULATORY STAFF

REBUTTAL TESTIMONY

OF

WILLIE J. MORGAN

NOVEMBER 26, 2008



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PSC SC
DOCKETING DEPT.

DOCKET NO. 2006-327-WS

**Petition of the Office of Regulatory Staff
Regarding Wyboo Plantation Utilities,
Incorporated's Collection and Charging of
Unauthorized and Unapproved Rates**

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REBUTTAL TESTIMONY OF WILLIE J. MORGAN

FOR

THE OFFICE OF REGULATORY STAFF

DOCKET NO. 2006-327-WS

**IN RE: PETITION OF THE OFFICE OF REGULATORY STAFF REGARDING
WYBOO PLANTATION UTILITIES, INCORPORATED'S COLLECTION
AND CHARGING OF UNAUTHORIZED AND UNAPPROVED RATES**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND
OCCUPATION.**

My name is Willie J. Morgan, and my business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina Office of Regulatory Staff ("ORS") as the Program Manager for the Water and Wastewater Department.

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
PROCEEDING?**

A. The purpose of my rebuttal testimony is to clarify ORS's position on issues raised by Mr. Mark Wrigley in his direct testimony. Specifically, I will focus on the water and sewer tap fees, customer protests, Wyboo's "Motion for Approval of Water Tap Fee to Conform to Existing Rate, *Nunc Pro Tunc*", and customer refunds.

1 Q. HAS ORS CHANGED ITS POSITION ON THE ISSUE OF WYBOO
2 HAVING CHARGED CUSTOMERS WATER TAP FEES NOT
3 APPROVED BY THE COMMISSION?

4 A. No. Commission Order No. 1998-33 allowed Wyboo to charge a sewer
5 tap fee of \$500. Wyboo did not receive authorization from the Commission to
6 charge a water tap fee from the time it was granted a certificate on November 1,
7 1996 until February 26, 2007. It was not until February 26, 2007, that Wyboo
8 was granted the authority to charge a water tap fee. This was authorized in
9 Docket No. 2005-13-WS, Order No. 2007-138. The Commission granted the fees
10 for water and sewer taps for situations only when Wyboo physically connects a
11 customer or developer to its water or sewer system. Following a review of the
12 information provided to the ORS in response to its data requests and as shown in
13 Exhibit WJM-1, Wyboo records indicate at least 97 customers were billed a water
14 tap fee prior to the Commission granting Wyboo approval to charge this fee. See
15 Exhibit WJM-1. In addition, Wyboo has not provided information to demonstrate
16 that it physically installed the taps for the customers specifically identified in
17 Exhibit WJM-1 of my direct testimony. In fact, it is ORS's understanding that the
18 taps located in the Deercreek Community were installed by the developer. This
19 would include all taps on Blue Heron Point within the Deercreek Community.
20 See Rebuttal Exhibit WJM-1, information supplied by Bill Gregory and Daryl
21 Korpi to Willie Morgan.

1 **Q. DID ORS FILE A RESPONSE TO WYBOO'S MOTION FOR APPROVAL**
2 **OF A WATER TAP FEE TO CONFORM TO EXISTING RATE, *NUNC***
3 ***PRO TUNC*?**

4 A. Yes. ORS filed a response on November 17, 2008. In our response, we
5 requested the Commission deny Wyboo's motion, require refunds where
6 appropriate and come into compliance with the Commission rules and regulations.

7 **Q. EXHIBIT MSW-1 INDICATES IN THE "TRACE REFUND/CHECK"**
8 **COLUMN THAT "WAIVERS" ARE PENDING OR FILED IN MOST OF**
9 **THE WATER AND SEWER TAP FEE CATEGORIES. WHAT IS ORS'**
10 **POSITION WITH REGARD TO THESE OVERCHARGE "WAIVERS"?**

11 A. As required under 26 S.C. Code Ann. Regs. 103-533 and 103-733 when a
12 customer is inadvertently overcharged by the utility, "...the utility shall, at the
13 customer's option, credit or refund the excess amount paid by that customer or
14 credit the amount billed..." The Commission regulations provide a clear remedy
15 for Wyboo customers. ORS has not been provided with documentation to show
16 that the customers have been given the option to receive a credit or a refund by
17 the utility.

18 Wyboo has provided ORS documentation demonstrating Wyboo has
19 entered into a contract agreement or "waiver" with one customer in order to be
20 relieved of its responsibility for refunding or crediting the customer's account for
21 an overcharge of tap fees. See Rebuttal Exhibit WJM-2. ORS has requested but
22 not received information regarding such settlements.

1 Furthermore, it is unclear whether the "consideration" offered in lieu of
2 the refunds or credits is proper and in compliance with the Commission's rules
3 and regulations.

4 **Q. EXHIBIT MSW-1 INDICATES IN THE "TRACE REFUND/CHECK"**
5 **COLUMN THAT CUSTOMER ACCOUNTS WERE ADJUSTED,**
6 **CREDITED AND/OR REFUNDS WERE MADE FOR OTHER**
7 **UNAPPROVED CHARGES. WAS ORS ABLE TO VERIFY THAT**
8 **CUSTOMER ACCOUNTS WERE ADJUSTED, CREDITED AND/OR**
9 **REFUNDED?**

10 **A.** No. While Wyboo provided a spreadsheet of information in MSW-1
11 detailing some overcharges or unapproved fees have been returned to customers
12 or credited to their accounts (i.e. Cut-on fees, Cut-off fees, Illegal water use fees,
13 Water Service for Pool charges, Impact fees, DHEC sewer fees, customer
14 deposits), Wyboo did not provide verification of these adjustments, credits and/or
15 refunds. In order to verify, ORS may review a customer's complete billing
16 history, Wyboo bank statements and Wyboo cancelled checks. As of the date of
17 this testimony, ORS cannot verify the reconciliation information provided in
18 MSW-2 is accurate.

19 **Q. HAS WYBOO ACCURATELY CHARACTERIZED THE STATUS OF**
20 **THE WATER TAP FEE OVERCHARGES PRESENTED IN YOUR**
21 **DIRECT TESTIMONY?**

22 No. As shown in Exhibit WJM-1, Bate Stamp #0036, the customer
23 identified as Springdale Builders, Inc. paid a water tap fee of \$3,600 for eight (8)

1 taps. In Exhibit "MSW-1", Mr. Wrigley on line 197 incorrectly label this
2 customer as being "overbooked" by ORS. Exhibit WJM-1, Bate Stamp #0036 is
3 from Wyboo's own billing records.

4 In addition, Mr. Wrigley failed to provide any information about the status
5 of several other customers of the utility that were overcharged and identified in
6 Exhibit WJM-2 of our direct testimony. This includes, but is not limited to, the
7 following customers:

Bate Stamp	Customer Name	Type of Charge	Amount of Overcharge	Date	Address
0005	Ard, Mark/Stacy	Sewer Tap Fee	\$600.00	10/21/2006	10 Lake Arbu Dr.
0006	Bazen, Wayne	Sewer Tap Fee	\$650.00	8/22/2005	1015 Mill Creek
0013	Cupp, Richard Tammy	Sewer Tap Fee	\$650.00	8/18/2006	208 Lake Arbu Dr.
0013	Cupp, Richard Tammy	Water Tap Fee	\$450.00	8/18/2006	208 Lake Arbu Dr.

8

9 **Q. HAVE WYBOO CUSTOMERS CONTACTED THE ORS REGARDING**
10 **UNAPPROVED RATES AND CHARGES?**

11 Yes. ORS received several complaints from customers concerning
12 overcharges by Wyboo. In addition to these complaints, several customers filed
13 letters of protests or complaints to the Commission. These include filings by Mr.
14 Bob Parro on January 11, 2007 and Mr. Richard P. Bricken, Esquire on February
15 22, 2007. In August 2008, Mr. Bricken filed a letter with this Commission
16 indicating that he was satisfied with the resolution of his complaint and did not
17 want to proceed with his complaint. Mr. Bob Sternberg likewise has indicated that
18 he is satisfied with the resolution of his complaint. However, ORS does not have
19 any of the details of the complaint resolution for these customers.

1 Additionally, some customers who were overcharged may not know about
2 this petition and their ability to file a letter of protest or intervene in this matter.
3 Wyboo provided notice to current customers. Therefore, former customers (i.e.,
4 home builders) and customers that have moved were not given notice of this
5 proceeding.

6 **Q. DOES THAT CONCLUDE YOUR REBUTAL TESTIMONY?**

7 **A. Yes, it does.**

Memo

October 19, 2006

To: Mr. Willie Morgan
Office of Regulatory Staff
Fax 803-737-0801

From: Bill Gregory
Contract Developer of Wyboo Plantation-Retired

I have reviewed the responses of John F. Beach to your request Dated October 13, 2006.

Section 2.22

The response says "During construction of the systems, the original construction company did not install Elder Valves anywhere within the utility system".

This is a total misrepresentation. According to Timmons Engineering plans approved by DHEC, Barrett Construction installed a 2" brass valve in the sewer collection line at every patio home. James Septic Tank Company has a package price to furnish all labor and material to install the complete STEP tank system on lot, including Electric hook up and drain line into 2" valve at collection line. This cost is included in the contractor's price to owner. Wyboo Plantation Utilities is not involved in this installation and has no cost.

It appears to me that if a disconnection is required for lack of payment, both water & sewer would be involved. When you cut off the water you have cut off the sewer!!

Section 2.24

The letter provided you dated May 7, 2002 from Wayne Stokes, Manager Construction Permitting Section of DHEC, to Mark Wrigley, Wyboo Plantation Utilities clearly states DHEC's regulation, period.

Section 2.29

The statement that the utility has plans on the drawing board for an upgrade of the wastewater treatment plant for at least \$1.2 million dollars is completely unreasonable and out of line. The utility needs to supply the requirements for the approved franchise area. This would be a fraction of the stated cost.

RECEIVED

OCT 25 2006

ORS
J,T,W,W/W

Springdale Builders
Will Bomar Road
Greer, SC 29651

Mr. Willie J. Morgan P.E.
Program Manager for Water & Waste Water
South Carolina office of Regulatory Staff
1441 Main Street
Suite 300
Columbia, SC 29201

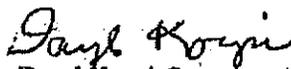
Dear Sir;

I have been advised that Mark Wrigley, Owner of Wyboo Plantation Utilities, Inc. Has charged my company unauthorized tap fee rates for water and sewer at Deercreek P Plantation in Clarendon County.

Enclosed are copies of two checks payable to Wyboo Plantation Utilities, Inc. Totaling \$9,000.00 representing 20 water taps @ \$450.00 each. One check payable to Wrigley and Associates, Inc. for \$8,032.80 representing 12 sewer taps @ \$650.00 Each = \$7,800.00 plus \$232.80 for water usage.

I would appreciate any help you can give me to recoup these unauthorized Charges.

Very truly yours,


Daryl Korpi-Owner

REBUTTAL
EXHIBIT WJM-1

SPRINGDALE BUILDERS, INC.
 100 W. 10TH ST.
 GREENSBORO, NC 27409

THE NATIONAL BANK OF SOUTH CAROLINA
 100 W. 10TH ST. 100
 GREENSBORO, NC 27409

3195

2-25-05

PAY TO THE ORDER OF WYBOD PLANTATION UTILITIES INC \$ 5400.00

DOLLARS

AMOUNT PAID BY DEBIT CARD

Ray King

CK 3195 \$5,400.00 3/1/2005

SPRINGDALE BUILDERS, INC.
 100 W. 10TH ST.
 GREENSBORO, NC 27409

THE NATIONAL BANK OF SOUTH CAROLINA
 100 W. 10TH ST. 100
 GREENSBORO, NC 27409

3289

3-22-05

PAY TO THE ORDER OF WYBOD PLANTATION UTILITIES \$ 3600.00

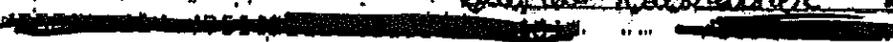
THREE THOUSAND SIX HUNDRED

DOLLARS

AMOUNT PAID BY DEBIT CARD \$ 450.00

Ray King

CK 3289 \$3,600.00 3/25/2005

SPRINGDALE BUILDERS, INC. 135 WALL BOSMAN RD. GREER, SC 29615 (864) 895-8018		THE NATIONAL BANK OF SOUTH CAROLINA GREER, SOUTH CAROLINA 87-96-632		4486
PAY TO THE ORDER OF Wrigley & Associates, Inc.		1/30/2006		
Eight Thousand Thirty-Two and 80/100		\$ 8,032.80		DOLLARS
Wrigley & Associates, Inc. 1809 Cherryvale Dr. Sumter, SC 29184				
MEMO <i>Dear Creek with some fees</i>		<i>Shonda Kellerman</i>		
				
				
				
FOR DEPOSIT ONLY Wrigley & Associates, Inc. 1809 Cherryvale Drive Sumter, SC 29184				

Date:02-03-2006 Sequence:6942192180 Serial:4486 TR  Account  TranCode:0
 Amount:\$8,032.80 DbCr:D InsnID:834 EmployedFlag:- MInsnID:834 MIFromInsnID:834 MIAccount3542881601
 MICostCenter:89 MIAppID:1 MIBranch:0 MITeller:0

1.8 Provide copies of all existing and proposed special contracts bind Wyboo to a third party. Special contracts would include but not be limited to contracts for maintenance, construction agreements, rate agreements, system ownership, and loan agreements.

The following is responsive to Data Request No. 1.8:

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

**ACCEPTANCE OF OFFER
IN COMPROMISE AND
AGREEMENT TO PAY**

KNOW ALL MEN BY THESE PRESENTS, that **RICHARD P. BRICKEN & KAREN C. BRICKEN** (herein after referred to as "Releasors,") for and in consideration of a monthly credit to Releasors' water & sewer account with Wyboo Plantation Utilities, Inc., equal to the entire monthly water and sewer charge nominally owed by Releasors on a monthly basis for an eighteen (18) month calendar period only, beginning September, 2008, to Wyboo Plantation Utilities, Inc., (hereinafter the, "Credit"), (also, hereinafter the "Consideration"), the receipt and sufficiency of which is now acknowledged, when provided over the eighteen (18) month calendar period, and other valuable consideration and in consideration of the receipt of the mutual covenants, promises, and Consideration contained herein, does hereby accept the offer in compromise of **WYBOO PLANTATION UTILITIES, INC.**, (hereinafter referred to as "Offeror,") (Releasors and Offeror are sometimes collectively referred to herein as the "parties") and **RICHARD P. BRICKEN & KAREN C. BRICKEN** will immediately, upon full performance by **WYBOO PLANTATION UTILITIES, INC.**, release **WYBOO PLANTATION UTILITIES, INC.**, its heirs, its assigns and its attorneys, whether or not named herein, of and from any and all claims, demands, debts, rights, actions, causes of action at law or in equity, complaints, damages, costs, loss of service, expenses, and compensation of whatsoever nature, now existing or which may hereafter be claimed to accrue, and all known and unknown, foreseen and unforeseen, claimed damages and the consequences thereof resulting, which heretofore have been claimed, and which hereafter may be claimed by **RICHARD P. BRICKEN & KAREN C. BRICKEN**, from any and all acts and/or omissions from the beginning of time until the date of these presents, as a result of or in any way related to, directly or indirectly, or by reasonable implication to their business and customer relationship or otherwise or any other claim which could possibly be asserted by **RICHARD P. BRICKEN & KAREN C. BRICKEN** against **WYBOO PLANTATION UTILITIES, INC.** The release by **RICHARD P. BRICKEN & KAREN C. BRICKEN** will be self executing upon full performance by **WYBOO PLANTATION UTILITIES, INC.** In consideration of the execution of this

*and its successors in interest
R.P.B. K.C.B.*

*and its successors in interest
R.P.B.*

Agreement by **WYBOO PLANTATION UTILITIES, INC., RICHARD P. BRICKEN & KAREN C. BRICKEN** agree to immediately contact an appropriate representative from the Public Service Commission of South Carolina and request that their participation in Docket No. 2006-327-W/S be withdrawn. Releasors' future nonparticipation in Commission Dockets related to **WYBOO PLANTATION UTILITIES, INC.** is agreed upon and is expressly contingent on the full performance of this Agreement by **WYBOO PLANTATION UTILITIES, INC.**

WYBOO PLANTATION UTILITIES, INC. having agreed to provide the cited Consideration to **RICHARD P. BRICKEN & KAREN C. BRICKEN**, desires to enter into this Agreement for the express purpose of forever settling all disputes, complaints, and differences between the parties, in any forum or venue, including all forums and venues in any State or location of the United States of America and its territories. In consideration of the above, the undersigned also agree that the execution of this Agreement and the mutual covenants and promises made herein, are not to be construed as an admission of liability on the part of either party, and **EACH** denies liability of any nature or kind to the **OTHER**, other than **WYBOO PLANTATION UTILITIES, INC.**'s agreement to provide the Consideration cited in this Agreement, in the form and matter set forth in this Agreement and Releasors' stated obligations.

This Agreement shall cover and shall include, and does cover and does include, any and all claimed future damages of any kind ^{RB, KB} ~~not now~~ known to and/or claimed by the parties hereto, but which may later be claimed, including the claimed effects and consequences thereof, and including all causes of action therefore, as a result of, directly or indirectly, or in any way related to directly or indirectly, or by reasonable implication to their business and customer relationship, or otherwise or any other claim which could possibly be asserted by **RICHARD P. BRICKEN & KAREN C. BRICKEN**, *as related to the subject matter pending herein.* ^{RB, KB}

The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the Parties and this Agreement contains the entire agreement between the parties hereto, and that the terms of this Agreement are contractual and not a mere recital. The Releasors warrant that there are no other claims or debts, satisfied or not, known or unknown of any kind and the Parties agree that no other such interest has been disclosed to **WYBOO PLANTATION UTILITIES, INC.** The Parties further agree that the Consideration to be provided pursuant to this Agreement is and shall be, a complete bar to any

Acceptance of Offer in Compromise and Agreement to Pay
August 13, 2008
Page 4 of 4

AGREEMENT TO PAY

WYBOO PLANTATION UTILITIES, INC., ^{KB} and for its successors in interest ^{KB} in consideration of RICHARD P. BRICKEN & KAREN C. BRICKEN's otherwise unconditional acceptance of its offer in compromise, agrees to provide the Credit described hereinabove as set forth hereinabove. WYBOO PLANTATION UTILITIES, INC.'s Agreement to provide the Credit is unconditional, except as set forth in this Agreement.

WITNESS our Hands and Seals on this ____ day of August, in the year of our Lord, Two Thousand and Eight, and in the Two Hundred and Thirty-Second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of:

[Signature]
(WITNESS)
[Signature]
(WITNESS)

WYBOO PLANTATION UTILITIES, INC.
(OFFEROR)

[Signature]
By:

I HAVE READ AND UNDERSTAND THE LEGAL EFFECT OF THIS DOCUMENT AND THE BINDING NATURE OF THIS DOCUMENT, AND HAVE RECEIVED A COPY OF THE SAME AND I AGREE TO TERMS OF THIS AGREEMENT, INTENDING MYSELF TO BE LEGALLY BOUND TO THE TERMS HEREOF WITHOUT RESERVATION, HAVING HAD SUFFICIENT TIME TO READ AND UNDERSTAND THIS DOCUMENT AND TO SEEK ADVICE AND LEGAL COUNSEL ON THE RIGHTS AND OBLIGATIONS SET FORTH HEREIN.

[Initials]
RPU KCB

(WITNESS)

(WITNESS)

[Signature]
RICHARD P. BRICKEN
(RELEASOR)

(WITNESS)

(WITNESS)

[Signature]
KAREN C. BRICKEN
(RELEASOR)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-327-WS

IN RE:

Petition of the Office of Regulatory Staff)
Regarding Wyboo Plantation Utilities,)
Incorporated's Collection and Charging of)
Unauthorized and Unapproved Rates) **CERTIFICATE OF SERVICE**

This is to certify that I, Pamela J. McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **DIRECT TESTIMONY AND EXHIBITS OF WILLIE J. MORGAN** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Mark S. Wrigley, CEO
Wyboo Plantation Utilities, Incorporated
Post Office 2099
Sumter, SC, 29151

Richard L. Whitt, Counsel
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, SC, 29201



Pamela J. McMullan

November 26, 2008
Columbia, South Carolina